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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

R. ALEXANDER ACOSTA, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, vs. WESTSIDE DRYWALL, INC., a corporation; and MOHSEN SALEM, an individual; Defendants.	HON. ANNA J. BROWN Case No. 3:15-cv-02411-BR CONSENT JUDGMENT AGAINST ALL DEFENDANTS

Plaintiff, R. Alexander Acosta, Secretary of Labor, United States Department of Labor (the "Secretary"), Defendants Westside Drywall, Inc. and Mohsen Salem, have agreed to resolve the matters in controversy in this civil action and consent to the entry of this consent judgment ("Consent Judgment" or "Judgment") in accordance herewith:

I. LIABILITY

A. The Secretary filed the Complaint alleging that Defendants violated provisions of Sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. §§, 207, 211(c), 215(a)(2), and 215(a)(5).

B. The Secretary and Defendants waive Findings of Fact and Conclusions of Law.

C. Defendants admit that the Court has jurisdiction over the parties and subject matter of this civil action and that venue lies in the district court for the District of Oregon.

D. Defendants and the Secretary agree to the entry of this Consent Judgment without contest.

E. Defendants acknowledge that Defendants and any individual or entity acting on their behalf or at their direction (i.e. supervisors and managers at Defendants' Hubbard, Oregon operations) have notice of, and understand, the provisions of this Consent Judgment.

F. Defendants understand and expressly acknowledge that demanding or accepting any of the monies due to any current or former employees under this Consent Judgment, threatening any employee for accepting monies due under this Consent Judgment, or threatening any employee for exercising any of his or her rights under or related to the FLSA is specifically prohibited and may subject Defendants to equitable and legal damages, including punitive damages and civil contempt.

G. This Consent Judgment shall constitute a full and final resolution and release of the allegations contained in the Secretary's Complaint; however, this Consent Judgment shall not act as a bar to any action under Section 16(b) of the FLSA, 29 U.S.C § 216(b), for any person not listed on Exhibit A to this Consent Judgment, nor any action under Section 16(b) of the FLSA for any person named on Exhibit A to this Consent Judgment for any time period other than December 28, 2012 to August 11, 2017 ("Subject Period").

H. Without admitting liability or the truth of any of the allegations in the Complaint, Defendants agree to the terms and conditions of this Consent Judgment.

II. INJUNCTION

It is therefore, upon motion of the attorneys for the Secretary, and for cause shown, HEREBY ORDERED, ADJUDGED, AND DECREED that pursuant to Section 17 of the FLSA, 29 U.S.C. § 217, Defendants and their officers, agents, servants, successors, employees, and all persons in active concert or participation with them be, and they hereby are, permanently enjoined and restrained from violating the provisions of the FLSA, in any of the following manners:

A. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), pay any of their employees who in any workweek are engaged in commerce or the production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA, less than time and one half the employees' regular rate for hours worked in excess of 40 hours in the workweek.

B. Defendants shall not fail to make, keep, and preserve accurate records of the wages, hours, and other work conditions and practices of each and every employee who performs any work for any Defendant as required by FLSA Section 11(c), 29 U.S.C. § 211(c). Within forty-five (45) calendar days of the date that Defendants sign this Consent Judgment, Defendants shall implement a recordkeeping, retention, and inspection program as detailed below:

1. Defendants shall maintain accurate payroll, time and piece work records, as applicable, for every employee for a period of not less than three years.

2. Defendants shall reflect all the amounts paid to employees, regardless of the manner of payment, on the payroll records. Defendants' records must also show the basis on which wages are paid, i.e., whether employees are paid on an hourly or piece rate basis, and, if piece rate, what those piece rates are, and the number of piecework units earned.

3. Defendants shall pay employees for all compensable waiting time. Compensable waiting time is defined by the Secretary's regulations at 29 C.F.R. § 785. It includes all time the employee is engaged to wait. An employee is only considered "off-duty," and, therefore, not working, when he or she is completely relieved from duty and the time period is long enough to enable the employee to use the time effectively for his/her own purposes.

4. Defendants shall inform all employees who do not drive Defendants' vehicles that they may report directly to remote worksites or, alternatively, that they may choose, for their convenience, to travel in company vehicles from Defendant's principal place of business to remote worksites. Defendants shall further inform such employees that, regardless of which option they choose, employees are not required to perform any work duties until they arrive at remote worksites. Pursuant to 29 U.S.C. § 203, Defendants shall not suffer or permit such

employees to perform work duties before arriving at remote worksites, unless such time is included in the employees' hours worked and compensated accordingly. Defendants shall notify employees at least one day before their shift regarding the location of remote worksites.

5. Defendants shall record accurate start and stop times for each employee, and specifically show any deductions for unpaid break times. Compensable work time shall include but is not limited to, all time employees are required to spend in travel from the employer's operation areas to the job site, all time spent traveling between job sites, and all time performing administrative tasks.

6. Within ninety (90) calendar days of the date of entry of this Consent Judgment, Defendants shall provide each of their current employees with a copy of the following Employee Rights Statement and Inspection Notice ("Employee Notice"), which summarizes the terms of this Consent Judgment and provides direct guidance from the U.S. Department of Labor regarding employees' rights under the FLSA:

EMPLOYEE RIGHTS STATEMENT AND INSPECTION NOTICE

Your Employer must pay you for all hours worked, which includes all time that you are required to be on the Employer's premises and are not free from duties.

You have the right to have all hours worked for your employer in one pay period to be counted on one time record.

Your piece-rate earnings must at least be equal to the hourly state minimum wage for all hours worked.

You have the right to be paid for overtime, which means that you have the right to be paid at one and one-half times your regular rate for all hours you work more than 40 hours in one workweek.

You have the right to inspect your time records.

You have the right to speak with the U.S. Department of Labor if you think your Employer has not paid you for all hours worked, paid overtime, or has tried to deter you from asserting your rights to the wages required by law.

The U.S. Department of Labor has the right to inspect your Employer's worksite at any time, and you have the right to talk to any representative of the U. S Department of Labor privately and not in the presence of your employer. Your employer may not encourage or order you to leave your work areas or residences to prevent or discourage you from speaking with the U.S. Department of Labor.

You can call the U.S. Department of Labor to make a confidential complaint at 503-326-3057.

YOUR EMPLOYER IS SUBJECT TO PENALTIES IF YOUR EMPLOYER VIOLATES THE LAW. PLEASE NOTIFY THE US DEPARTMENT OF LABOR IF YOU THINK YOUR EMPLOYER HAS NOT FULFILLED THE REQUIREMENTS OF THIS NOTICE.

7. Defendants shall post copies of the Employee Notice in English and Spanish as follows:

a. Defendants shall post the Employee Notice near the time clock at Defendants' headquarters in Hubbard, Oregon, and such notice shall remain at that location for a period of two years from the date of entry of this Consent Judgment;

b. Defendants shall provide a copy of the Employee Notice to each of Defendants' current employees within ninety (90) days of entry of this Consent Judgment;

c. Defendants shall provide a copy of the Employee Notice to all newly hired employees before or by the date said employee begins performing work for Defendants for a period of two years from the date of this Consent Judgment.

8. Defendants shall not discriminate and/or retaliate in any way against any employees who file a complaint or cause any proceeding to be instituted under or related to the FLSA and Defendants specifically agree to cooperate with officials of the Department of Labor.

9. Within six (6) months of the date that Defendants sign this Consent Judgment, Defendants shall hire an independent third party approved by representatives of the Secretary to conduct training as to the requirements of the FLSA. The training shall be for one session of not less than one hour with an opportunity for questions and answers and shall address the FLSA's minimum wage, overtime, record keeping, disclosures and anti-retaliation requirements. Defendant Mohsen Salem, management, supervisors and individuals who determine the employees' pay or schedules or who prepare payroll shall attend this training, which shall cover the compensable time for which employees shall receive pay.

10. On at least an annual basis, Defendants shall hire an independent third party approved by representatives of the Secretary to conduct training as to the requirements of the

FLSA. The training shall be for one session of not less than one hour with an opportunity for questions and answers and shall address the FLSA's minimum wage, overtime, record keeping, disclosures and anti-retaliation requirements. All owners, management, supervisors and individuals who determine the employees' pay or schedules or who prepare payroll shall attend this training. Defendants shall maintain documentation of these trainings for a period of two years and provide it to representatives of the Secretary of Labor upon their request. This provision shall be in effect for a period of two years from the date entry of this Judgment by the Court.

11. The parties will make a good faith effort to resolve any issues concerning compliance with the terms of this Consent Judgment. Nothing in this paragraph is intended to, or shall be interpreted as, limiting the Secretary's authority, solely at the Secretary's discretion, to proceed with an enforcement action when the Secretary deems the action appropriate.

III. MONIES DUE

A. IT IS FURTHER ORDERED that Defendants, jointly and severally, shall not withhold payment of **$142,500.00** which represents the unpaid FLSA overtime hereby found to be due for the Subject Period to those current and former employees of Defendants named in Exhibit A, attached hereto and made a part hereof, in the amounts set forth therein.

B. IT IS FURTHER ORDERED and ADJUDGED that Plaintiff shall have and recover from Defendants, jointly and severally, the additional amount of $142,500.00 as FLSA liquidated damages hereby found to be due for the Subject Period to those current and former employees of Defendants named in Exhibit A, attached hereto and made a part hereof, in the amounts set forth therein, pursuant to authority expressly provided in Section 16(c) of the FLSA, 29 U.S.C. § 216(c).

C. Defendants, and any individual or entity acting on their behalf or at their direction, shall not request, solicit, suggest, or coerce, directly, or indirectly, any employee to return or to offer to return to Defendants or to someone else for Defendants, any monies in the form of cash, check, or any other form, for wages previously due or to become due in the future to said employee under the provisions of this Consent Judgment or the FLSA; nor shall Defendants accept, or receive from any employee, either directly or indirectly, any monies in the form of cash, check, or any other form, for wages heretofore or hereafter paid to said employee under the provisions of this Consent Judgment or the FLSA; nor shall Defendants discharge or in any other manner discriminate, solicit or encourage anyone else to discriminate, against any such employee because such employee has received or retained monies due to him or her from Defendants under the provisions of this Consent Judgment or the FLSA.

D. FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to Section 16(c) of the FLSA, in favor of the Secretary as a judgment owed to the United States of America and against Defendants, jointly and severally, in the total amount of **$285,000.00 which** is comprised of **$142,500.00** in unpaid overtime compensation owed by Defendants and pursuant to authority expressly provided in Section 16 of the FLSA, 29 U.S.C. § 216, an additional equal amount as liquidated damages of **$142,500.00.**

IV. PAYMENT

A. Payment of the monetary Judgment provisions of this Consent Judgment shall be accomplished as follows:

1. Within 10 days of the date of this Consent Judgment is entered by the Court, Defendants shall deliver a cashier's check in the amount of $285,000 and made out to "U.S. Department of Labor, Wage and Hour Division," to the U.S. Department of Labor. The check shall note in the memo that it is for "Westside Drywall Settlement." The check shall be delivered to: U.S. Department of Labor, Wage and Hour Division, Portland District Office, 620 SW Main Street, Room 423, Portland, Oregon, 97205.

2. Within 21 days of the date of this Consent Judgment is entered by the Court, Defendants shall deliver to the address in paragraph IV.A.1. above, a schedule for each employee listed on Exhibit A, showing their name, last known address, phone number and social security number.

3. The amounts paid pursuant to this Consent Judgment shall be used by the Secretary to satisfy the obligations imposed under the provisions of Section 16(c) of the FLSA, 29 U.S.C. § 216(c). The Secretary shall allocate and distribute the proceeds of the $285,000 payment, less deductions for employees' share of Social Security and other federal withholding taxes, to the persons named and in those amounts set forth in the attached Exhibit A, or to their estates if that be necessary, in his sole discretion.

B. Any monies not paid within a period of three (3) years from the date of its receipt, because of an inability to locate the proper persons or because of their refusal or inability to accept the funds, shall be deposited in the Treasury of the United States, as miscellaneous receipts, pursuant to 29 U.S.C. § 216(c).

C. Each party shall bear all fees and other expenses (including court costs) incurred by such party in connection with any stage of this proceeding to date.

IT IS ORDERED that the parties to the instant complaint shall comply with the terms of this Consent Judgment;

IT IS ORDERED that this Court shall retain jurisdiction of this action only for purposes of enforcing compliance with the terms of this Consent Judgment.

Dated this 16th day of August, 2017

THE HONORABLE ANNA J. BROWN
United States Senior District Judge

Consented to By:

For the Plaintiff:

Dated: August 15, 2017

NICHOLAS GEALE
Acting Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

BRUCE L. BROWN
Associate Regional Solicitor

DONNA F. BOND
DAVID EDELI
Trial Attorneys

By: __________
ANDREW J. SCHULTZ
Senior Trial Attorney

For the Defendants:

Dated: 8 / 14, 2017

By: ____________________
MOHSEN SALEM,
Individually and on behalf of
WESTSIDE DRYWALL, INC.

Approved as to Form:

Dated: 8 / 14, 2017

By ____________________
KYLE D. SCIUCHETTI, OSB #965705
Bullivant Houser Bailey PC
Attorneys for Defendants

Exhibit A

	Last Name, First Name	Back Wages	Liquidated Damages
1.	Aguilar, William	$ 247.66	$ 247.66
2.	Alarcon Ortiz, Eduardo	$ 2,270.71	$ 2,270.71
3.	Angeles Ramirez, Emmanuel	$ 1,231.61	$ 1,231.61
4.	Barron, Jose	$ 1,866.41	$ 1,866.41
5.	Bautista Sandoval, Francisco	$ 586.49	$ 586.49
6.	Becerra, Hugo	$ 123.02	$ 123.02
7.	Bernabe Robles, Francisco	$ 3,908.32	$ 3,908.32
8.	Bravo Garcia, Aldo	$ 3,556.98	$ 3,556.98
9.	Buenrostro, Efrain	$ 53.49	$ 53.49
10.	Buenrostro, Francisco	$ 320.39	$ 320.39
11.	Cabrera, Isaias	$ 2,584.24	$ 2,584.24
12.	Candelario Sepulveda, Luis	$ 535.30	$ 535.30
13.	Candelario, Jose	$ 1,490.85	$ 1,490.85
14.	Ceja Santana, Jorge L	$ 1,648.25	$ 1,648.25
15.	Chavez Navarro, Ismael	$ 115.60	$ 115.60
16.	Contreras Villa, Pedro	$ 1,493.18	$ 1,493.18

Exhibit A

	Last Name, First Name	Back Wages	Liquidated Damages
17.	Cortes Quiroz, Alfredo	$ 558.09	$ 558.09
18.	Cortes Quiroz, Roberto	$ 2,683.03	$ 2,683.03
19.	Cortes Villa, Roberto	$ 2,402.23	$ 2,402.23
20.	Cortes, Jose Q	$ 113.97	$ 113.97
21.	Cortez, Jeronimo	$ 2,466.63	$ 2,466.63
22.	Davila, Alejandro	$ 170.59	$ 170.59
23.	de Jesus, Jose	$ 2,131.56	$ 2,131.56
24.	Diaz Bernabe, Florencio	$ 4,913.20	$ 4,913.20
25.	Elizarraraz, Enrique	$ 4,786.74	$ 4,786.74
26.	Enciso Ayala, Erick	$ 1,067.17	$ 1,067.17
27.	Estrada Alberto, Angel	$ 3,203.12	$ 3,203.12
28.	Estrada Chavez, Enrique	$ 122.84	$ 122.84
29.	Flores Lagos, Jonathan	$ 122.30	$ 122.30
30.	Flores, Gustavo	$ 437.79	$ 437.79
31.	Flores, Ivan	$ 441.41	$ 441.41
32.	Flores, Salvador	$ 134.05	$ 134.05

Exhibit A

	Last Name, First Name	Back Wages	Liquidated Damages
33.	Garcia Hernandez, Antonio	$ 1,127.05	$ 1,127.05
34.	Garcia, Gabino	$ 116.14	$ 116.14
35.	Gomez Ramirez, Alejandro	$ 5,315.20	$ 5,315.20
36.	Gonzalez Zuniga, Diana	$ 4,056.97	$ 4,056.97
37.	Hernandez, Josue	$ 1,732.01	$ 1,732.01
38.	Hernandez, Juan	$ 4,306.46	$ 4,306.46
39.	Hernandez, Ramon	$ 246.51	$ 246.51
40.	Holliman, Walter	$ 3,033.59	$ 3,033.59
41.	Hurtado Garcia, Epifanio	$ 3,097.30	$ 3,097.30
42.	Hurtado Garcia, Juan	$ 2,989.11	$ 2,989.11
43.	Jimenez, Eusebio	$ 4,894.72	$ 4,894.72
44.	Jimenez, Felipe	$ 273.71	$ 273.71
45.	Martin, Hugo	$ 550.67	$ 550.67
46.	Martin, Petronilo	$ 2,160.73	$ 2,160.73
47.	Martinez, Luis	$ 1,601.68	$ 1,601.68
48.	Martinez, Mariano	$ 65.04	$ 65.04

Exhibit A

	Last Name, First Name	Back Wages	Liquidated Damages
49.	Medina Cortes, Alberto	$ 4,297.04	$ 4,297.04
50.	Mendoza Herrera, Miguel	$ 2,650.71	$ 2,650.71
51.	Mercado, Jose	$ 2,164.18	$ 2,164.18
52.	Merrill, Jared	$ 1,885.38	$ 1,885.38
53.	Munoz, Angel	$ 514.32	$ 514.32
54.	Navas, Luis	$ 429.11	$ 429.11
55.	Perez, Jose	$ 454.07	$ 454.07
56.	Pina, Jose	$ 1,911.55	$ 1,911.55
57.	Ramos, Jose	$ 377.36	$ 377.36
58.	Ramos, Vicente	$ 430.20	$ 430.20
59.	Rauda, Lorenzo	$ 940.73	$ 940.73
60.	Reyes Ramirez, Uvaldo	$ 2,475.65	$ 2,475.65
61.	Reyes, Jose	$ 198.10	$ 198.10
62.	Reyes, Juan	$ 325.08	$ 325.08
63.	Rodriguez Avalos, Juan	$ 2,516.75	$ 2,516.75
64.	Rodriguez Lisea, Ruben	$ 3,322.57	$ 3,322.57

Exhibit A

	Last Name, First Name	Back Wages	Liquidated Damages
65.	Rodriguez Resendiz, Francisco	$ 2,216.20	$ 2,216.20
66.	Rodriguez Torres, Jesus	$ 2,575.61	$ 2,575.61
67.	Rodriguez Torres, Rafael	$ 2,756.63	$ 2,756.63
68.	Rodriguez, Rafael	$ 1,075.21	$ 1,075.21
69.	Rojas Cabrera, Eduardo	$ 1,040.50	$ 1,040.50
70.	Sabino Romero, Leobardo	$ 4,785.48	$ 4,785.48
71.	Sanchez Barriga, Pedro	$ 1,883.66	$ 1,883.66
72.	Sanchez Quintero, Pedro	$ 1,992.02	$ 1,992.02
73.	Sanchez, Enrique	$ 1,689.86	$ 1,689.86
74.	Sanchez, Rigoberto	$ 112.13	$ 112.13
75.	Santiago, Federico	$ 1,874.17	$ 1,874.17
76.	Torres, Jose A	$ 1,635.94	$ 1,635.94
77.	Torres, Pedro	$ 124.28	$ 124.28
78.	Trejo, Mauricio	$ 369.24	$ 369.24
79.	Ugarte Hernandez, Daniel	$ 2,878.40	$ 2,878.40
80.	Vazquez, Juan	$ 1,788.41	$ 1,788.41

Exhibit A

	Last Name, First Name	Back Wages	Liquidated Damages
81.	Vega Hernandez, Juvencio	$ 1,143.67	$ 1,143.67
82.	Verduzco, Miguel	$ 4,311.68	$ 4,311.68
	Totals:	**$ 142,500.00**	**$ 142,500.00**